

REMARKS

In the present case claims 1-12, 14, 16-18, 27 and 28 are pending and under examination. Favorable reconsideration of the subject application is respectfully requested in view of the following remarks.

NON-STATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING

Claims 1, 2, 9-12, 14, 16, 17, 27 and 28 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-12, 15, 16-20, 22-37 of U.S. Patent No. 6,602,274 (the '274 patent). Specifically, the Examiner alleges that the '274 patent teaches the claimed invention; but, acknowledges that the '274 patent does not specifically teach that the total light dose is 500 joules/cm² to 10,000 joules/cm². However, the Examiner concludes that it would have been *prima facie* obvious to provide a light dose of 500 joules/cm² to 10,000 joules/cm², because it is within the purview of the art to determine the total light dose that results in selective destruction of the targeted tissue using the transdermal irradiation intensity of 5mW/cm² to 100mW/cm². The Examiner further concludes that the skilled artisan would have been motivated to administer the target liposomes via intravenous administration as this is a common mode of administration of liposomes to target internal organs.

Applicants respectfully traverse this basis for rejection and submit that the Action fails to provide sufficient rationale for one having ordinary skill in the art to arrive at the presently claimed invention with any reasonable expectation of success. Thus, the Action fails to establish a *prima facie* case of obviousness against the presently claimed invention.

Nonetheless, to expedite prosecution of the instant application and without acquiescence to this basis for rejection, Applicants submit herewith a terminal disclaimer over the '274 patent, thereby obviating this basis of rejection. Applicants respectfully request that this basis of rejection be reconsidered and withdrawn.

OBJECTIONS TO THE CLAIMS

Claims 3-8 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants respectfully note that the terminal disclaimer submitted over the '274 patent obviates this basis of rejection. In view of the terminal disclaimer, claims 1, 2, 9-12, 14, 16, 17, 27 and 28 are in condition for allowance, and thus, claims 3-8 and 18 no longer depend upon a rejected base claim.

Reconsideration and withdrawal of this basis for objection is respectfully requested.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now believed to be allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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